

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

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| PHILIP R. MCHUGH, |) | |
| |) | |
| |) | Case No. 1:21-cv-00238 |
| |) | |
| Plaintiff, |) | Honorable Michael R. Barrett |
| |) | |
| v. |) | |
| |) | |
| FIFTH THIRD BANCORP, <i>ET AL.</i> , |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A SUR-REPLY

As illustrated in RHR’s [Proposed] Sur-Reply in Opposition to McHugh’s Motion to Compel, attached hereto as Exhibit A, McHugh’s Reply raises new arguments that go well beyond any issue implicated by RHR’s Response brief, and mischaracterizes both the arguments posed by RHR in its Response and the law of the cases on which McHugh relies. RHR should be afforded the opportunity to address these new arguments and misstatements.

Under Local Rule 7.2(a), this Court may permit a party to file a sur-reply brief “upon leave of court for good cause shown.” This Court has found good cause where the replying party raised an issue for the first time in a reply brief (*Geiger v. Pfizer, Inc.*, 271 F.R.D 577, 580– 581 (S.D. Ohio 2010) and where the party seeking to file a sur-reply sought to “clarify misstatements” contained within the reply brief (*Guyton v. Exact Software N. Am.*, No. 2:14-CV-502, 2015 WL 9268447, at *4 (S.D. Ohio Dec. 21, 2015)). This Court has also permitted sur-replies where the party seeking to file a sur-reply failed to make such a showing but the Court found the moving party “will suffer no prejudice by the filing of the sur-reply.” *Nat’l City Bank v. Aronson*, 474 F. Supp. 2d 925, 930 (S.D. Ohio 2007) (noting that “in this circuit, there is a strong preference that claims be adjudicated on their merits”) (internal citations omitted).

Circumstances such as these provide the grounds on which a sur-reply may be permitted. Accordingly, RHR respectfully requests that this Court grant it leave to file its [Proposed] Sur-Reply in Opposition to McHugh's Motion to Compel attached hereto as Exhibit A.

Dated: May 31, 2024

Respectfully submitted,

By: /s/ Nicole C. Mueller
Nicole C. Mueller (*Pro Hac Vice*)
nicole.mueller@klgates.com
Christopher A. Bloom (*Pro Hac Vice*)
christopher.bloom@klgates.com
K&L Gates, LLP
70 West Madison Street, Suite 3100
Chicago, Illinois 60602
Telephone: (312) 372-1121
Fax: (312) 827-8000

Attorneys for Defendant
RHR INTERNATIONAL LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court via the Court's CM/ECF system on May 31, 2024, which will serve all counsel of record.

By: /s/ Nicole C. Mueller
Nicole C. Mueller